

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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Order Instituting Rulemaking to Conduct
a Comprehensive Examination of the
California Teleconnect Fund.

R.13-01-010
(Filed January 24, 2013)

**REPLY COMMENTS
OF THE OFFICE OF RATEPAYER ADVOCATES
ON PROPOSED DECISION RESOLVING PHASE 1 AND 2 ISSUES
REGARDING THE
CALIFORNIA TELECONNECT FUND**

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I. INTRODUCTION

Pursuant to Rule 14.3 of the California Public Utilities Commission's (CPUC or Commission) Rules of Practice and Procedure, the Office of Ratepayer Advocates (ORA) submits these reply comments on the Proposed Decision of Commissioner Peterman Resolving Phases 1 and 2 Issues Regarding the California Teleconnect Fund.

In opening comments, certain service providers opposed the Proposed Decision's (PD) condition that participating service providers must disclose complete and detailed pricing information for each CTF-eligible service and their functional equivalents and post all reported information on their websites.¹ Opposition to this condition is without merit. Disclosure of pricing information advances transparency, enabling consumers to make informed service choices. It is also fundamental to enhancing effective program oversight. The objecting parties do not demonstrate material errors of fact underlying the PD's policy rationale for pricing transparency. ORA's reply comments focus on the Competitive Providers' allegation that the PD commits legal error in requiring CTF providers to include pricing for Internet access services on their websites.

II. DISCUSSION

The Competitive Providers claim that the condition that broadband Internet access providers post pricing on their website as a requirement for participating in the CTF program is neither reasonable nor lawful. These claims are without merit.

As an initial matter, the condition is a reasonable one. As the PD notes, Communications Division (CD) Staff identified the current case-by-case service eligibility determination requirements as one of the most challenging administrative aspects of the program.² The provision of detailed pricing information will assist CD staff in making determinations concerning functionally equivalent services and would ensure compliance with CTF service eligibility and discount calculations. Moreover,

¹ See, Opening Comments of the California Association of Competitive Telecommunications Companies (CALTEL), at pp. 2-4; Opening Comments of AT&T California, at pp. 1-2; Opening Comments of Charter Fiberlink CA-CCO and Cox California Telecom, LLC (Competitive Providers), at pp. 5-7.

² PD, at pp. 44-45.

publicly posting detailed pricing information will give eligible participants a way to compare prices for equivalent CTF services so they know they are getting the best price. Currently, program participants are unable to compare prices to know if they are getting the best price for CTF services. Publicly posting detailed pricing information will assist in that effort and ultimately reduce financial strain on the fund.

The Competitive Providers' claim that this condition cannot lawfully be applied to Internet access services should be dismissed. Competitive Providers argue that such a condition is unlawful because the Federal Communications Commission (FCC) recently concluded that broadband Internet access is jurisdictionally interstate for regulatory purposes.³ The Competitive Providers further claim that the FCC also elected to forbear from "section 203's tariffing requirements for broadband Internet access service, and adopt[ed] mandatory detariffing"⁴, and note that the Commission is precluded from adopting rules that conflict with, or are not otherwise wholly consistent with the FCC's rules.⁵

As even CALTEL acknowledges, however, this is not a jurisdictional issue.⁶ The PD correctly notes that the Commission is well within its authority to prudently administer CTF funding consistent with California Pub. Util. Code § 451, which requires just and reasonable service. Section 701 further enables the Commission to "do all things necessary" in exercising its jurisdiction. These are recognized as very broad grants of

³ Competitive Providers' Opening Comments, at p. 6, citing *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, Declaratory Ruling, and Order, ¶ 431, FCC 15-24 (rel. Mar. 12, 2015)(*Open Internet Order*).

⁴ *Id.*, citing *Open Internet Order*, ¶ 505.

⁵ *Id.*, citing *Open Internet Order*, ¶ 432.

⁶ Opening Comments of CALTEL, at p. 4.

authority by the courts.⁷ The Commission, therefore, has broad authority to impose such a requirement as a condition to receiving ratepayer monies.

Competitive Providers' arguments fail to recognize that this is a state program where providers voluntarily participate. The requirement to post detailed pricing information is not being imposed across the board upon all broadband Internet access providers in the state, but as part of the program rules.

Moreover, the Competitive Providers ignore other statements in the *Open Internet Order* concerning state jurisdiction to regulate broadband. For example, the FCC further noted that notwithstanding the interstate nature of broadband Internet access service, states "of course have a role with respect to broadband" and the fact that this service is jurisdictionally interstate does not by itself preclude all possible state requirements regarding that service.⁸ The FCC stated it would preempt state actions that are "inconsistent" with the regulatory scheme adopted in the *Open Internet Order*, but Competitive Providers fail to explain how such a condition (which would be voluntarily assumed by the provider if it chose to participate in the CTF program) would conflict or be wholly inconsistent with federal policies. Indeed, it is particularly difficult to see how this would be the case given the transparency rules adopted in the *Open Internet Order*.⁹ For example, these transparency rules require broadband providers to disclose promotional rates, all fees and/or surcharges, and all data caps or data allowances.¹⁰ The FCC enhanced its transparency rules in part so that consumers are fully informed about the services they are purchasing; the rationale set out in the PD is consistent with this

⁷ See, e.g., *San Diego Gas & Elec. v. Superior Ct.* (1996) 13 Cal. 4th 893, 915 ("[The Public Utilities Act] vests the commission with broad authority to 'supervise and regulate every public utility in the State' (§ 701) and grants the commission numerous specific powers for the purpose. ...the commission's powers are not limited to those expressly conferred on it: the Legislature further authorized the commission to 'do all things, whether specifically designated in [the Public Utilities Act] or in addition thereto, which are necessary and convenient' in the exercise of its jurisdiction over public utilities.") (*Ibid.*, italics added.) See also, *Southern California Edison v. Peevey* (2003) 31 Cal. 4th 781, 792.

⁸ *Open Internet Order*, ¶ 431, fn 1276.

⁹ *Id.*, ¶¶ 24, 154, 164.

¹⁰ *Id.*

policy.¹¹ Contrary to the Competitive Providers' claim, this is not a tariffing requirement, but simply a matter of disclosure and consumer choice.

III. CONCLUSION

ORA supports the condition that, in order to participate in the CTF, service providers must publicly disclose detailed cost information for eligible services. The PD is on solid legal ground in imposing this condition, and commenters fail to demonstrate any error to the contrary.

Respectfully submitted,

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¹¹ *Id.* Moreover, since the FCC's transparency rules already require such disclosure, it is difficult to see how such disclosure for the CTF program would constitute an additional burden, as the Competitive Providers claim.